

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PROGRESSIVE SPECIALTY INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Cuyahoga, OH
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Randy T. Burch, Esquire - Forry Ullman, One Bethlehem Plaza, Suite 400, Bethlehem, PA 18018, 610-332-3400

DEFENDANTS

LEONARDO LOPEZ, et al.

County of Residence of First Listed Defendant Dauphin, PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 372 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 373 Death Penalty	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise		PERSONAL PROPERTY	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	Habeas Corpus:	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	Other:		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 540 Mandamus & Other		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 and 28 U.S.C. 1391(b)**VI. CAUSE OF ACTION**Brief description of cause:
Declaratory Judgment**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE John E. Jones, III

DOCKET NUMBER 19-cv-00743-JEJ

DATE

05/10/2019

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

Randy T. Burch

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ACTION FOR DECLARATORY JUDGMENT

AND NOW, comes the Plaintiff Progressive Specialty Insurance Company, by and through its attorneys, Forry Ullman, and files the following Action for Declaratory Judgment and in support thereof alleges the following:

PARTIES

1. Plaintiff Progressive Specialty Insurance Company is a licensed insurance carrier in the Commonwealth of Pennsylvania that is a citizen of Ohio organized and existing under the laws of Ohio, with its principal place of business located at 6300 Wilson Mills Road, Mayfield Village, Ohio 44143.
 2. Defendant Leonardo Lopez is a citizen of the Commonwealth of Pennsylvania residing at 6234 Jerome Drive, Harrisburg, Pennsylvania, 17112.
 3. Defendant Rita Ramirez is a citizen of the Commonwealth of Pennsylvania residing at 531 Eshelman Street, Highspire, Pennsylvania, 17034.

4. Defendant Marco Estrada is a citizen of the Commonwealth of Pennsylvania residing at 531 Eshelman Street, Highspire, Pennsylvania, 17034.

5. Defendant Two Brothers Pizzeria Italian Market and Giuro, Inc., d/b/a Two Brothers Pizzeria and Two Brothers Pizzeria Italian Market (hereinafter referred to as "Defendant Two Brothers Pizzeria") is a citizen of the Commonwealth of Pennsylvania, existing and organized under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 4640 High Pointe Boulevard, Suite 64, Harrisburg, Pennsylvania 17111.

6. Defendant Joseph Romano is a citizen of Alaska residing at 2905 Captain Cook Estates Circle, Anchorage, Alaska 99517.

7. Defendant MMG Insurance Company is a licensed property casualty insurance company in the Commonwealth of Pennsylvania that is a citizen of Maine with its principal place of business located at 44 Maysville Street, Presque Isle, Maine 04769-0729, and Defendant MMG is named as an interested party herein because at all times material hereto it issued a commercial automobile policy and a commercial liability policy to Defendant Giuro, Inc., d/b/a Two Brothers Pizzeria and Two Brothers Pizzeria Italian Market, and Defendant MMG Insurance has already filed its own Action for Declaratory Judgement maintaining there is no coverage afforded under its policies for the incident of February 2, 2018. (See paragraphs 17 and 18 herein below).

JURISDICTION

8. This Court has jurisdiction of this Action for Declaratory Judgment under 28 U.S.C. Section 1332, as this matter is between citizens of different states and the matter in controversy exceeds the sum value of \$75,000, exclusive of interests and costs.

VENUE

9. Venue is appropriate in the Federal District Court of the Middle District of Pennsylvania pursuant to 28 U.S.C. Section 1391(b).

ACTION FOR DECLARATORY JUDGMENT

10. At all times relevant hereto, Defendant Leonardo Lopez was a driver of a certain 1997 Ford Contour that was insured under an automobile insurance policy issued by Plaintiff Progressive Specialty Insurance Company under Policy Number 10753596 issued to policyholder Defendant Marco Estrada. (A true and correct copy of the automobile insurance policy, including the Declarations Page, is collectively attached hereto as Exhibit 1).

11. Under the aforesaid policy, the liability limits under the policy are \$250,000 each person/\$500,000 each accident.

12. At all times material hereto, Defendant Rita Ramirez was the owner of the aforesaid 1997 Ford Contour and she is married to Defendant Marco Estrada who is a manager and/or employee of Defendant Two Brothers Pizzeria.

13. At all times material hereto, Defendant Leonardo Lopez was an employee of Defendant Two Brothers Pizzeria and/or was otherwise working for Defendant Two Brothers Pizzeria where he was being paid in cash and also permitted to keep tips from customers as compensation for his work.

14. On or about February 2, 2018, Defendant Leonardo Lopez was working at Defendant Two Brothers Pizzeria when Defendant Marco Estrada asked and/or instructed Defendant Lopez to deliver food from Defendant Two Brothers Pizzeria to Red Rood Inn

and to Defendant Rita Ramirez's home.

15. At all times material hereto, Defendant Marco Estrada and/or Defendant Rita Ramirez gave permission to Defendant Leonardo to use the aforesaid 1997 Ford Contour to deliver the food.

16. At all times material hereto, Defendant Leonardo Lopez used the 1997 Ford Contour to deliver food from Defendant Two Brothers Pizzeria to the Red Roof Inn located at or near 950 Eisenhower Blvd, Harrisburg, PA 17111 and was intending on then driving the 1997 Ford Contour to Defendant Rita Ramirez's home to deliver food from Two Brothers Pizzeria when he left the Red Rood Inn and was traveling in southbound lane of Eisenhower Boulevard at or near Gilligan's Bar and Grill at 987 Eisenhower Blvd, Harrisburg, PA 17111.

17. Then, on February 2, 2018 at around 9:07PM, while Defendant was driving on Eisenhower Boulevard by or near Gilligan's Bar and Grill on his way to deliver food from Defendant Two Brothers Pizzeria to Defendant Rita Ramirez's home, the Defendant Joseph Romano walked out into traffic on Eisenhower Boulevard into the path of the 1997 Ford Contour operated by Defendant Lopez and/or Defendant Joseph Romano was struck by the vehicle operated by Defendant Lopez.

18. At all times material hereto, Defendant Joseph Romano has commenced an action against Leonardo Lopez, Rita Ramirez, and Two Brothers Pizzeria Italian Market and Giuro, Inc., d/b/a Two Brothers Pizzeria and Two Brothers Pizzeria Italian Market in the Court of Common Pleas of Dauphin County, Pennsylvania seeking money damages for alleged personal injuries arising out of the February 2, 2018 accident. (A copy of the underlying complaint is attached hereto as Exhibit 2).

19. In the underlying complaint, it is alleged that Defendant Leonardo Lopez was in the course and scope of this employment as a cashier/pizza delivery driver for Defendant Two Brothers Pizzeria when the accident with Defendant Romano occurred.

20. At all times material hereto, Defendant Leonardo Lopez was using the aforesaid 1997 Ford Contour to carry property for compensation or a fee.

21. At all times material hereto, Defendant Leonardo Lopez was using the aforesaid 1997 Ford Contour for the delivery of food from Defendant Two Brothers Pizzeria.

22. At all times relevant hereto, the pertinent part of the aforesaid automobile policy issued to Defendant Marco Estrada covering the 1997 Ford Contour by Plaintiff Progressive Specialty Insurance Company plainly and unambiguously states on page 4 as follows:

EXCLUSIONS – READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.

Coverage under this Part I, including our duty to defend, will not apply to any **insured person** for:

1. **bodily injury or property damage** arising out of the ownership, maintenance or use of any vehicle or trailer while being used:
 - a. to carry persons or property for compensation or a fee;
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
 - c. for **ride sharing activity**.

This exclusion does not apply to shared-expense car pools.

23. In view of the plain and unambiguous language of Plaintiff's aforesaid automobile policy exclusion, there is no liability coverage for Defendant Leonardo Lopez and Defendant Rita Ramirez because Defendant Leonardo Lopez was using the 1997 Ford Contour to carry property "for compensation" and/or for the delivery of food.

24. Based upon the foregoing, Plaintiff Progressive Specialty Insurance Company has no duty to defend or indemnify Defendant Leonardo Lopez, Defendant Marco Estrada, and/or Defendant Rita Ramirez

25. Plaintiff Progressive Specialty Insurance Company has notified its named insured, Defendant Marco Estrada, under the aforesaid policy, that there is a coverage issue arising out of the fact that Defendant Leonardo Lopez was using the 1997 Ford Contour for the delivery of food.

26. Plaintiff Progressive Specialty Insurance Company believes, and, therefore, avers that all persons and entities that have any interest in the controversy presented by this declaratory judgment action, or that may be affected by the determination of This Honorable Court, have been named as parties to the action.

27. The aforesaid allegations create an actual case and controversy over which this Court has jurisdiction.

28. A Declaratory Judgment or Decree by This Honorable Court would terminate the uncertainty and/or controversy giving rise to this action.

29. A determination of this action for declaratory relief by This Honorable Court would settle the controversy between the parties and afford relief from uncertainty and insecurity with respect to the rights, status, and other legal relations of the parties involved herein.

30. Plaintiff Progressive Specialty Insurance Company seeks a declaration that it owes no duty to defend or indemnify Defendant Leonardo Lopez, Defendant Rita Ramirez, and/or Defendant Marco Estrada for the claims and/or causes of action of Defendant Joseph Romano and/or any cross claims that may arise from the underlying

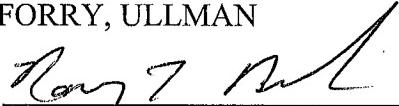
lawsuit.

WHEREFORE, Plaintiff Progressive Specialty Insurance Company respectfully requests that This Honorable Court enter Judgment, granting the following relief:

- A. A Decree determining the controversy as alleged herein;
- B. A Decree declaring that Plaintiff Progressive Specialty Insurance Company has no duty to defend or indemnify Defendant Leonardo Lopez, Defendant Rita Ramirez, and/or Defendant Marco Estrada for any claims or causes of actions of Defendant Joseph Romano and/or any cross claims that may arise from the underlying lawsuit.; and
- C. A stay of the proceedings in the actions, if any, filed by Defendant Joseph Romano until disposition of the issues raised herein; and
- D. Such other relief as the Court may deem appropriate

Respectfully Submitted:

FORRY, ULLMAN

By: 

Randy T. Burch, Esquire
Attorney for Plaintiff, Progressive
Specialty Insurance Company

Date: May 10, 2019